

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<p>RHONDA HALL,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>VERIZON COMMUNICATIONS, INC. and</p> <p>VERIZON NEW ENGLAND, INC.</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL ACTION NO. 05-30002-MAP</p> <p>OCTOBER 18, 2006</p>
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**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S FOURTH MOTION FOR EXTENSION OF TIME**

Defendants, Verizon Communications, Inc. and Verizon New England, Inc. (“Verizon”), respectfully oppose Plaintiff’s Final Motion for Extension of Time, which was filed today. This is the fourth motion for extension of time filed by Plaintiff’s counsel with respect to the Opposition to Defendants’ Motion for Summary Judgment. Moreover, today’s motion was filed despite this Court’s Order of October 11, 2006 granting Plaintiff’s third motion for extension of time and indicating that there would be “no further extensions.” As a result of Plaintiff’s failure to timely file an Opposition to Defendants’ motion, Defendants request that this Court consider the Motion for Summary Judgment to be unopposed. This court should grant this request for two reasons: (1) Plaintiff has had more than adequate time to prepare a response; and (2) such a remedy has been authorized by the First Circuit in similar circumstances.

First, Plaintiff has had more than enough time to prepare a response. By way of background, this Court added two weeks into the original briefing schedule—at the request of Plaintiff’s counsel—in setting the date for Plaintiff to respond to Defendants’ Motion as September 15, 2006. Despite having this additional time built in to the briefing schedule,

Plaintiff has moved for additional time to respond to the Motion on four subsequent occasions, always on the due date for the response. Specifically, Plaintiff filed motions on September 15, October 2, October 10, and today, October 18. Plaintiff cites no new or extenuating circumstances in the most recent motion, which simply recites the same grounds for extension that were set forth in prior motions. Plaintiff has now had two months to respond to Defendants' Motion, which was filed with this Court on August 18, 2006.

Second, the First Circuit has expressly authorized courts to consider summary judgment motions unopposed under these circumstances. "When a non-moving party fails to file a timely opposition to an adversary's motion for summary judgment, the court may consider the summary judgment motion unopposed, and take as uncontested all evidence presented with that motion." Perez-Cordero v. Wal-Mart P.R., 440 F.3d 531, 533-534 (1st Cir. 2006) (citing Mendez v. Banco Popular de Puerto Rico, 900 F.2d 4, 8 (1st Cir. 1990)). In Mendez, Plaintiff's counsel made an initial motion for extension of 30 days to respond to a summary judgment motion, which the court granted. Two subsequent motions for extension of time were denied, but the plaintiff finally filed—months later—an opposition brief. The Court refused to consider the late-filed opposition brief and ruled in Defendant's favor on the Motion. The First Circuit affirmed the decision in all respects, noting "in the absence of a manifest abuse of discretion, we will not interfere with a district court's reasoned refusal to grant incremental enlargements of time." Mendez v. Banco Popular de Puerto Rico, 900 F.2d 4, 8 (1st Cir. 1990). See also, Macaulay v. Anas, 321 F.3d 45, 49 (1st Cir. 2003) ("Courts simply cannot afford to let lawyers' schedules dominate the management of their dockets."); McIntosh v. Antonino, 71 F.3d 29, 38 (1st Cir. 1995) ("Litigants cannot expect that courts will dance to their every tune, granting extensions on demand to suit lawyers' schedules.").

For these reasons, Defendants respectfully request that this Court deny Plaintiff's Fourth Motion and consider Defendants' Motion for Summary Judgment to be unopposed.

Respectfully submitted,

DEFENDANTS,
VERIZON COMMUNICATIONS, INC. and
VERIZON NEW ENGLAND, INC.

By /s/ Stacy Smith Walsh

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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2006, a copy of foregoing **Defendants' Opposition to Plaintiff's Final Motion for Extension of Time** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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